



# California Fair Political Practices Commission

December 4, 1987

Jon S. Seitz  
Shipsey & Seitz, Inc.  
119 Palm Street  
Post Office Box 953  
San Luis Obispo, CA 93406

Re: Your Request for Advice  
Our File No. A-87-241

Dear Mr. Seitz:

You have requested advice on behalf of Bill Senna, a member of the Oceano Community Services District, concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> This letter confirms the telephone advice I previously provided to you.

## QUESTION

The Oceano Community Services District owns the Oceano Airport. Is Mr. Senna prohibited from participating in decisions concerning the operation of the airport because he is a certified flight instructor and occasionally provides instruction to students who own their own planes?

## CONCLUSION

Based on the facts provided, Mr. Senna may participate in most decisions concerning the operation of the Oceano Airport. However, if his flight instruction activities change, Mr. Senna should seek additional guidance from this office.

## FACTS

Mr. Senna is employed full time by the United States Postal Service. One of his avocations is flying. He received his license as a certified flight instructor in 1985-86 and provides occasional flight instruction to students who own

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

their own airplanes. He does not advertise his flight instruction services; instead, he depends on referrals from friends and former students.

Mr. Senna's flight instruction activities take place at Oceano Airport and two other airports in the San Luis Obispo area. In 1986, he received no income from flight instruction. In 1987, he has received income totaling approximately \$2,200 from his flight instruction services, of which \$116 derived from services provided to students utilizing the Oceano Airport.

The Oceano Community Services District owns and operates the Oceano Airport. The district leases certain airport facilities to fixed base operators. The fixed base operators provide various services and offer flight instruction to the general public. Unlike Mr. Senna, the fixed base operators furnish the planes in which flight instruction services are provided.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a) and (c).

As a result of his flight instruction activities, Mr. Senna has an investment in a business entity and receives income from that business entity and from his students.<sup>2/</sup> Thus, he is required to disqualify himself from participating in governmental decisions which would foreseeably and materially affect himself or his economic interests.

The effect of a decision is "reasonably foreseeably" if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The community services district may face a broad range of decisions concerning the operation of the airport. You have not informed us of any pending decisions which would directly affect Mr. Senna's ability to provide flight instruction services at the Oceano Airport, but those are the types of general operating decisions which may require his disqualification. For example, if the district proposes to prohibit individuals such as Mr. Senna from offering any flight instruction services at the airport, an effect on Mr. Senna's economic interests would be foreseeable.

You also have asked whether Mr. Senna may participate in decisions concerning the selection and regulation of fixed base operators at the airport. The effect of decisions concerning the fixed base operators on Mr. Senna's flight instruction activities is unclear. Except in the area of flight instruction services, it is unlikely that the community services district's decisions concerning the fixed base operators would foreseeably affect Mr. Senna's economic interests. Moreover, because Mr. Senna provides flight instruction only to students who furnish their own planes, it appears that Mr. Senna and the fixed base operators currently do not compete for the same students. Thus, the effect of decisions concerning flight instruction services on Mr. Senna's economic interests may not be reasonably foreseeable.

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<sup>2/</sup> Any student who pays Mr. Senna \$250 or more in a 12-month period is a source of income to Mr. Senna for purposes of Section 87103(c). However, Mr. Senna is not required to disclose any student on his annual statement of economic interests unless he has received \$10,000 or more from the student during the past year. (Section 87207(b) and 87302(b).)

Mr. Jon S. Seitz  
December 4, 1987  
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In our telephone conversation we specifically discussed Mr. Senna's participation in decisions concerning the fixed base operators. You noted that Mr. Senna provides flight instruction only to students who own their own planes. Thus, he serves a different group of students than the fixed base operators serve. In addition, Mr. Senna's total income from flight instruction services in 1987 is approximately \$2,200, of which only \$116 was derived from services provided at Oceano Airport. Based on these facts, I advised you that it is not reasonably foreseeable that decisions concerning the fixed base operators at Oceano Airport will materially affect Mr. Senna's personal or business income.

This conclusion is based on the fact that Mr. Senna's flight instruction services are quite limited. If Mr. Senna substantially increases his flight instruction activity or expands his services to students who do not provide their own planes, you or Mr. Senna should contact us for additional guidance.

In other situations where a decision's is reasonably foreseeable, the decision also must materially affect the official's economic interests before his disqualification is required. In Mr. Senna's situation, we must determine whether the decisions in question would materially affect his personal income or the income to his flight instruction business.

If a decision would affect Mr. Senna's personal income by \$250 or more in a year, the effect is considered material. (Regulation 18702.1(a)(4), copy enclosed.) In addition, an increase or decrease of \$10,000 or more in the fiscal year gross revenues of his flight instruction business is considered material. (Regulation 18702.2(g), copy enclosed.) You and Mr. Senna should apply these regulations to the general airport operation decisions which come before the community services district to determine if Mr. Senna's disqualification is required.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

By: Kathryn E. Donovan  
Counsel, Legal Division

KED:da

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TELEPHONE (805) 543-7272

JOHN L. SEITZ  
(1924 - 1986)

September 18, 1987

Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, Ca., 95814

Re: Advice Letter - conflict of interest

Dear Sir/Madam:

This law firm represents Oceano Community Services District (OCSD) in the County of San Luis Obispo, California. I am requesting an advice letter pursuant to Government Code Section 83144 (b).

**FACTS:**

OCSD recently acquired an airport. Certain facilities at the airport have been leased to two different fixed base operators (FBO'S). Among other things the FBO's offer flight instruction to the general public.

An OCSD board member is a certified flight instructor. Twice during the past four years the board member has instructed students at the air port who own their own planes. The board member would like to continue to offer flight instructions to students on the same basis.

**ISSUES:**

1. Can the board member take part in the selection and regulation of fixed base operators at the air port?
2. Can the board member take part in other decision making matters regarding the operation of the air port?

Thank you for your prompt consideration in this matter. If you should have any questions please do not hesitate to contact me.

Very truly yours

JON S. SEITZ

j:ocsd-a

87-241

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Re: Advice Letter - conflict of interest

Dear Sir/Madam:

This law firm represents Oceano Community Services District (OCS D) in the County of San Luis Obispo, California. I am requesting an advice letter pursuant to Government Code Section 83144 (b).

**FACTS:**

OCS D recently acquired an airport. Certain facilities at the airport have been leased to two different fixed base operators (FBO'S). Among other things the FBO's offer flight instruction to the general public.

An OCS D board member is a certified flight instructor. Twice during the past four years the board member has instructed students at the air port who own their own planes. The board member would like to continue to offer flight instructions to students on the same basis.

**ISSUES:**

1. Can the board member take part in the selection and regulation of fixed base operators at the air port?

2. Can the board member take part in other decision making matters regarding the operation of the air port?

Thank you for your prompt consideration in this matter. If you should have any questions please do not hesitate to contact me.

Very truly yours

JON S. SEITZ

j:ocsd-a



# California Fair Political Practices Commission

September 23, 1987

Jon S. Seitz  
Shipsey & Seitz, Inc.  
P.O. Box 953  
San Luis Obispo, CA 93406

Re: 87-241

Dear Mr. Seitz:

Your letter requesting advice under the Political Reform Act was received on September 22, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh